

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-1314

To be argued by  
STEVEN LLOYD BARRETT

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA,

Appellee,

-against-

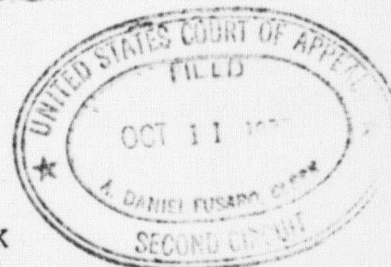
CHARLES EDWARD MORRISON,

Appellant.  
-----X

Docket No. 77-1314

APPENDIX FOR APPELLANT  
CHARLES EDWARD MORRISON

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



MARTIN ERDMANN, ESQ.,  
THE LEGAL AID SOCIETY  
Attorneys for Appellant  
CHARLES EDWARD MORRISON  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 732-2971

STEVEN LLOYD BARRETT,

Of Counsel.

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U.S. DISTRICT COURT  
 JUDGE/MAGISTRATE Assigned: **U.S. BROWN, JOHN C.**  
 vs. **a/k/a "Chuck"**  
**t/n HARRISON, CHARLES EDWARD**  
 (LAST FIRST MIDDLE)  
 Case Filed: Mo. **05** Day **27**  
 No. of Docs. **01**  
 Yr. **77** Doc. No. **0398** Pct. **01**  
 U.S. MAG. **77-450**

U.S. TITLE SECTION  
 OFFENSES CHARGED  
**21:812,841(a)(1) Distr. & possess. of Cocaine, II**  
**& 841(b)(1)(A)**

KEY DATES & INTERVALS  
 ARREST or U.S. Custody Began: **\*4-15-77**  
 Summons Served: **4-15-77**  
 First Appearance: **4-15-77**  
 INDICTMENT Information: **5-27-77**  
 Indict Waived: **5-27-77**  
 In Charging District: **5-27-77**  
 ARRAIGNMENT: **6-2-77**  
 Trial: **6-2-77**  
 SUPERSEEDING COUNTS: **6-2-77**  
 FINAL: **6-27-77**  
 Trial: **6-27-77**  
 Trial: **6-29-77**

U.S. MAG. **77-450**  
 AMT. **\$ 5,000**  
 Set **4-18-77**  
 Conditions **XX**  
 Deposit **XX**  
 Surety Bond **XX**  
 Collateral **XX**  
 3rd Party Cust. **XX**  
 Other **XX**

MAGISTRATE  
 DATE **4-12-77** INITIAL/NO **MDJ-08AB**  
 DATE **4-12-77** INITIAL/NO **MDJ-08AB**  
 OFFENSE (in Complaint) **21 USC 812,841(a)(1) and 841(b)(1)(A) - NARCOTICS**  
 SEARCH WARRANT Issued **4-16-77**  
 Summons Issued **4-26-77**  
 Arrest Warrant Issued **4-26-77**  
 COMPLAINT **4-26-77**  
 OFFENSE (in Complaint) **21 USC 812,841(a)(1) and 841(b)(1)(A) - NARCOTICS**

U.S. Attorney or Asst. **Kenneth V. Handal**  
**791-1986**  
 ATTORNEYS **Leonard Joy, Federal Defender Services Unit**  
 Outcome **DISMISSED**  
 HELD FOR GOV. OR OTHER PROCEEDING IN THIS DISTRICT  
 HELD FOR GOV. OR OTHER PROCEEDING IN DISTRICT OUTSIDE

\* Show last names and suffix numbers of other defendants on same indictment information.

| DATE    | (DOCUMENT NO.) | PROCEEDINGS                                                                                                                                                                             | EXCLUDABLE DELAY (a) (b) (c) (d) |
|---------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 4/12/77 |                | Complaint filed, warrant issued                                                                                                                                                         |                                  |
| 4-16-77 |                | Defendant presented, Legal Aid assigned, deft. remanded in lieu of \$5,000 PRB secured by \$500 and co-signed by a responsible person.                                                  |                                  |
| 4-18-77 |                | Defendant released on bail, deposited \$500 with Court (M19-1-4703). Deft. address: 434 W. 164th St., NY, NY. Co-signer: Shirley Williams, 690 Gerard St, Bronx, NY.                    |                                  |
| 5/27/77 |                | INDICTMENT FILED 77Cr398.....Owen, J.                                                                                                                                                   |                                  |
| 6-2-77  |                | Deft. (atty. Leonard F. Joy present) pleads not guilty. Bail \$5,000 PRB secured by \$500 cash, continued with PSA supervision. Case assigned to Ward, J. for all purposes.....Owen, J. |                                  |
| 6-27-77 |                | Filed Gov't's PROPOSED VOIR DIRE QUESTIONS.                                                                                                                                             |                                  |
| 6-27-77 |                | Filed Gov't's REQUESTS TO CHARGE.                                                                                                                                                       |                                  |
| 6-27-77 |                | Filed GOV'T'S MEMORANDUM OF LAW.                                                                                                                                                        |                                  |
| 6-27-77 |                | Deft failed to appear for trial. Court directs issuance of a B/W. B/W stayed until 2 pm. Jury Trial begins.                                                                             |                                  |
| 6-28-77 |                | Trial cont'd and concluded.                                                                                                                                                             |                                  |

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| DATE    | IV PROCEEDINGS                                                                                                                                                                                                                                   | V EXCESSIVE DELAY |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 6-29-77 | Jury deliberating. Verdict GUILTY as charged. P.S.I. ordered Sentence date 7/21/77 at 2P.M. Bail revoked and deft is remanded. WARD, J.                                                                                                          |                   |
| 7-21-77 | Filed JUDGMENT and PROBATION / COMMITMENT ORDER -- Imposition of Prison Sentence is suspended. Deft. is placed on probation for a period of THREE (3) YEARS, subject to the standing probation order of this court. WARD, J. (all copies issued) |                   |
| 7-26-77 | Filed Deft's NOTICE OF APPEAL to the USCA from the the Judgment filed 7-21-77. Mailed notices to the U.S. Atty and the counsel for the appellant,                                                                                                |                   |
| 8-3-77  | <i>Amend. Judgment 7-21-77</i>                                                                                                                                                                                                                   |                   |
| 8-31-77 | Filed transcript of proceedings dated June 27, 28, 29 & July 21, 1977.                                                                                                                                                                           |                   |
| 8-31-77 | Filed Notice of the Original Record being Certified and transferred to the USCA.                                                                                                                                                                 |                   |

FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|------|----------------|-------------|------|----------------|-------------|
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |

JUDGE WAIN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

77 CRIM. 0398

UNITED STATES OF AMERICA

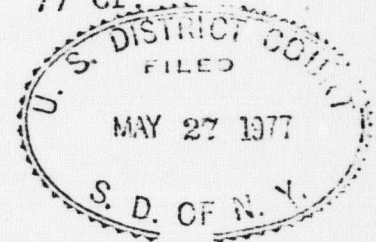
- v -

CHARLES EDWARD MORRISON,

Defendant.

INDICTMENT

77 Cr.



The Grand Jury charges:

On or about the 11th day of September, 1975,  
in the Southern District of New York, CHARLES EDWARD  
MORRISON, the defendant, unlawfully, intentionally and  
knowingly did distribute and possess with intent to  
distribute a Schedule II narcotic drug controlled sub-  
stance, to wit, approximately 62.98 grams of cocaine.

(Title 21, United States Code, Sections  
812, 841(a)(1) and 841(b)(1)(A).)

*James R. James*  
FOREMAN

*Robert B. Fiske, Jr.*  
ROBERT B. FISKE, JR.  
United States Attorney



United States District Court  
SOUTHERN DISTRICT OF NEW YORK  
THE UNITED STATES OF AMERICA

vs.

CHARLES EDWARD MORRISON,  
Defendant.

INDICTMENT  
77 Cr.

(21 U.S.C. §§ 821, 841(A)(1),  
841(b)(1)(A).)

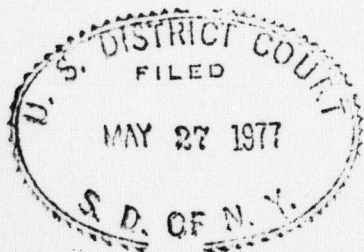
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Ann R. Tamm

Foreman.



May 27, 1977 - filed

Indictment - Queen

June 2, 1977 - Deft. (att. Leonard F. Joy)  
pleads not guilty. Bail \$5000. P.B.  
Secured by \$500. Cash, continued, with  
Pre-Trial Services Supervision.  
Assigned Ward J for all purposes.

Queen

JUN 27 1977 <sup>AM</sup> Defendant failed to appear for  
trial. Court directs issuance of a  
B/W. B/W stayed until 2: P.M.

JUN 27 1977 P.M. Trial begins.  
JUN 28 1977 Trial continued & concluded.

JUN 29 1977 Jury deliberating. Verdict -  
guilty as charged. P.S.D. ordered.  
Sentence date 7/21/77 at 2 P.M.  
Bail revoked & deft. is remanded  
Ward J.

Se over

July 1911

d

Sept. 20th 1911  
J. B. L. Prob. 3 yrs. subject to the  
standing order of this Court:

Ward, J. G.



USA  
v  
Morrison  
6/29/77  
J. Ward

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, it is the custom in this court, that the juror seated in seat number 1, in this case Miss Virginia Hughes, will serve as the foreperson of the jury. The duty of the foreperson is to take the vote of the jurors during deliberations and, in addition, should any question arise which the jury would wish to put to the Court during the course of deliberations, the foreperson will write out those questions, will then deliver them to the marshal who will be attending the jury outside of the juryroom and they will be sent to the Court.

I will read them, review them with counsel and try to respond promptly.

Finally, when and if the jury reaches a verdict, it is the duty of the foreperson to report that verdict when the jury has reassembled in court.

Ladies and gentlemen, we come now to that stage of the case where you and I do our part in the administration of justice. Your role is to pass upon and decide the factual issues.

As I said at the time you were being impanelled, you are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility, that is, the believeability of the witnesses. You



1 21  
2 resolve such conflicts as there may be in the evidence and you  
3 draw such reasonable inferences as may be warranted by the  
4 testimony and by the exhibits in the case.

5 My function is to instruct you on the law appli-  
6 cable to the case. It is your duty to accept the law as I  
7 state it to you in these instructions, and to apply the facts  
8 as you find them.

9 With respect to any fact matters, it is your  
10 recollection and yours alone that governs. Anything that  
11 counsel for the government or for the defendant or I may say  
12 with respect to matters in evidence, or any factual matter,  
13 whether stated in a question, in argument, summation or in  
14 my colloquy with counsel is not to be substituted for your  
15 own independent recollection.

16 The statements of counsel do not constitute  
17 evidence. So, too, anything I may have said during the trial  
18 or may refer to during the course of these instructions with  
19 respect to any matter in evidence or any factual matter is not  
20 to be taken in place of your own recollection.

21 Should you require assistance with regard to  
22 testimony which has been given in this case, you may request by  
23 note to be sent out from the juryroom that any portion of the  
24 testimony or any portion of my charge be read back to you.  
25 We will try to comply promptly with your requests.

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2 You will be brought back into the courtroom and  
3 the portion of the testimony or the portion of the charge which  
4 you request will be read to you.

5 In the same vein, should you wish to see any of  
6 the exhibits, that, is, except for Government's Exhibit 1, but  
7 any of the other exhibits which are in evidence, or the in-  
8 dictment, you may call for the exhibits which are in evidence  
9 or for a copy of the indictment, and these items will be sent  
10 in to the jury room for you to see.

11 Charles Edward Morrison has pleaded not guilty.  
12 Therefore, the government has the burden of proving the charge  
13 against him beyond a reasonable doubt. It is a burden that  
14 never shifts and remains on the government throughout the  
15 entire trial.

16 A defendant in this country does not have to prove  
17 his innocence. On the contrary, he is presumed to be inno-  
18 cent of the charges contained in the indictment. The presump-  
19 tion of innocence was in his favor at the start of the trial  
20 and continuously in his favor throughout the trial. It is  
21 removed if and when you are satisfied that the government has  
22 sustained its burden of proving the guilt of the defendant on  
23 each element of the crime charged beyond a reasonable doubt.

24 What is reasonable doubt? A reasonable doubt is  
25 such a doubt as would cause prudent men to hesitate to act in



matters important to themselves. It is a doubt which a reasonable, prudent person has after careful weighing of the evidence. A reasonable doubt is one which appeals to your reason, your judgment, your common sense, and your experience, Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for the defendant.

Vague, speculative or imaginary qualms or misgivings are not reasonable doubts. It is not necessary for the government to prove the guilt of the defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted.

The reason is that in this world of ours it is practically impossible for a person to be absolutely certain of any controverted fact which, by its nature, is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough that the government's guilt is established beyond a reasonable doubt, not beyond all doubt.

As I told you when you were being selected, an indictment, there was an indictment here, an indictment is not evidence. It is a technique or method or matter of procedure by which person accused by a grand jury of crimes

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are brought into court and then their guilt or innocence is determined by a trial jury such as yourselves.

An indictment has no evidentiary value. It does not constitute proof or evidence. It is merely an accusation, a charge.

The indictment in this case is in one count. That count charges that the defendant Charles Edward Morrison on or about September 11, 1975 possessed with intent to distribute and distributed a quantity of cocaine that is approximately 62.8 grams, which is approximately two ounces.

The indictment is short and I will read it:

"The grand jury charges on or about the 11th day of September, 1975, in the Southern District of New York, Charles Edward Morrison, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule 2 narcotic drug controlled substance, to wit, approximately 62.8 grams of cocaine."

This is charged as a violation of Title 21, United States Code, Sections 812, 841(a) and 814(b)(1a).

In pertinent part, Section 841 provides, "It shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

The listings of "controlled substances" are set



2 forth in various schedules in Section 812.

3 Schedule 2 of Section 812 includes cocaine as  
4 a narcotic drug controlled substance, the possession and distribution  
5 of which violates Section 841.

6 You will observe that under these laws it is not  
7 only the distribution of cocaine, in this case, that is  
8 prohibited; the law also prohibits another distinct and  
9 separate activity, that is, possession with intent to distribut  
10 narcotics; in this case, cocaine.

11 The commission of either of these constitutes  
12 a violation, whether one distributes narcotics or possesses  
13 them with intent to distribute them.

14 The elements which you must find beyond a reasonable  
15 doubt in order to find the defendant guilty as charged in the  
16 indictment are as follows: first: that on or about the date  
17 stated in the indictment, September 11, 1975, Charles Edward  
18 Morrison, the defendant here on trial, either possessed with  
19 intent to distribute or distributed a narcotic drug controlled  
20 substance.

21 Second; that the defendant did so unlawfully,  
22 willfully and knowingly.

23 And, third: that the controlled substance was co-  
24 caine.

25 In order to convict Charles Edward Morrison, the

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2 defendant here on trial, of the crime charged, you must find  
3 beyond a reasonable doubt that he, on September 11, 1975,  
4 either possessed with intent to distribute or distributed a  
5 narcotic drug controlled substance.

6 In a few moments I will instruct you on what is  
7 meant by "a narcotic drug controlled substance." Now I would like  
8 to focus on the terms "possessed with intent to distribute"  
9 and "distribute" as used in the statute.

10 At the outset you will note that these terms  
11 are stated in the alternative. Therefore, you may find this  
12 particular element which I will call the first element,  
13 established if you are satisfied that either the defendant  
14 possessed with intent to do so or that the defendant distributed  
15 You need not find both in order to convict.

16 Now, what do those terms mean. The word "possess"  
17 has its common everyday meaning, that is, to have actual  
18 physical custody of something or to have it within your con-  
19 trol. To have something within your control does not require  
20 that you have it in your hand or in your pocket.

21 The word "intent" refers to a person's state of  
22 mind so that the term "possessed with intent to distribute"  
23 can fairly be stated to mean: to control an item with the  
24 state of mind or purpose of transferring the item to another  
25 or others.



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If you find that the defendant here on trial, Charles Edward Morrison, in fact possessed a narcotic drug controlled substance on or about September 11, 1975, then you are called upon to consider all the other evidence and all the surrounding circumstances to determine whether he had the requisite intent to transfer it to others.

In this respect the government contends that the defendant knowingly possessed a narcotic drug controlled substance and that at the time he possessed it his mental state was such that he would transfer it to someone else.

As to the term "distribute," the statute defines this term to mean an actual, constructive or attempted transfer of a controlled substance. The government relies on the evidence adduced that the defendant transferred Government's Exhibit 1, the material in the glassine envelope, to Robert Baker, a government witness who testified at this trial.

So, the first element of the offense charged in the indictment is satisfied if you find beyond a reasonable doubt that Mr. Morrison possessed with intent to distribute a narcotic drug controlled substance. It is also satisfied if you find beyond a reasonable doubt Mr. Morrison physically transferred a narcotic drug controlled substance.

Turning to the next element, in considering the offense charged in the indictment you must determine whether



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2 the government has also proven beyond a reasonable doubt  
3 that the defendant acted "unlawfully, willfully and knowingly."

4 An act is done "knowingly" if it is done voluntarily  
5 and purposely and not because of mistake, accident, mere neg-  
6 ligence or other innocent reason. An act is done "willfully"  
7 if it is done deliberately and with an evil motive or purpose.  
8 "Unlawful" means contrary to law.

9 Hence, to do an act "unlawfully" means to do something  
10 that is contrary to law. It is sufficient if you are convinced  
11 beyond a reasonable doubt that the defendant was aware of the  
12 general unlawful nature of his act.

13 In essence, then, the phrase, "knowingly, willfully  
14 and unlawfully" means in a voluntary and deliberate fashion  
15 as opposed to mistakenly or accidentally.

16 Knowledge and intent exist in the mind. Since it  
17 is not possible to look into a man's mind to see what went  
18 on, the only way you have for arriving at a decision on this  
19 question is for you to take into consideration all the facts  
20 and circumstances shown by the evidence, including exhibits  
21 received in evidence and to determine from all such facts  
22 and circumstances whether the requisite knowledge and intent  
23 were present at the time in question.

24 Direct proof is unnecessary. Knowledge and intent  
25 may be inferred from all the surrounding circumstances.



1  
2 As to the third element, the indictment charges  
3 that the narcotic drug controlled substance is cocaine.

4 I instruct you as a matter of law that cocaine  
5 is a narcotic drug controlled substance. You must, however,  
6 still find beyond a reasonable doubt that the substance,  
7 Government's Exhibit 1, is cocaine.

8 On that issue you have heard a stipulation read to  
9 you. That was Government's Exhibit 2 in evidence, which is an  
10 agreement between the government and defense counsel to the  
11 effect that a Drug Enforcement Administration chemist who has  
12 tested the substance in Government's Exhibit 1 has concluded  
13 that it is cocaine. That stipulation between the government  
14 and defense counsel is the equivalent for your purposes of  
15 live testimony by that chemist to the effect that the substance  
16 contains cocaine. If you find that the substance is cocaine,  
17 the amount involved is immaterial.

18 Now, how do you determine the truth? How do you  
19 appraise the credibility of the witnesses who appeared here  
20 and testified in this courtroom?

21 Well, it has been said to you before, I'm sure,  
22 and if not, I will say it now, you use your own plain everyday  
23 common sense. You brought your common sense with you yester-  
24 day when the trial commenced. You have it with you today and  
25 I am confident that you will take it with you to the juryroom.



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2 I trust when you return ultimately from the juryroom you will  
3 still have it with you.

4 You have seen the witnesses. You have observed  
5 the manner of their testifying and whatever credit you may  
6 give them must be determined by their conduct and their manner  
7 of testifying and their relationship or interest in the out-  
8 come of the case.

9 In other words, you again apply your common sense  
10 taken from your everyday experiences.

11 You may, of course, take into consideration the  
12 interest of the witness, be he paid informer or a government  
13 agent. An interested witness is not necessarily unworthy of  
14 belief. That is just one factor, however, which you should  
15 consider and may consider in determining the weight and  
16 credibility to be given to that witness' testimony.

17 If any witness, no matter what his office or of-  
18 ficial position, has willfully testified falsely to any materi-  
19 fact, you may disregard all his testimony or accept such  
20 part of it as you believe worthy of belief or as appeals to  
21 your reason or judgment.

22 A witness may be discredited or impeached by  
23 contradictory evidence or by evidence that at other times  
24 the witness has made statements which are inconsistent with his  
25 testimony. If you believe a witness has been impeached and



2 thus discredited, it is your exclusive province to give the  
3 testimony of that witness such weight and credibility, if  
4 any, as you may think it deserves.

5 You heard the testimony of Johnny Burton who  
6 testified that he was a paid informant. Whatever you may  
7 think of informers, whatever I may think of informers, the  
8 government uses them in its law enforcement process. Whether  
9 you or I approve of that is beside the point, provided that  
10 such services in no way infringe upon the rights of the de-  
11 fendant because the use of such services is not forbidden  
12 by law.

13 You are not being asked to determine whether or  
14 not you agree with the policy, endorsing the use of informants  
15 or if you were in charge whether you yourself would use in-  
16 formants. However, you should examine the testimony of  
17 informants with great care and should determine whether the  
18 informant's testimony has been affected by interest or by  
19 prejudice against the defendant.

20 You have heard evidence to the effect that on prior  
21 occasions the defendant committed acts similar to the act  
22 charged in the indictment. You will recall that Johnny  
23 Burton testified that on approximately six occasions he brought  
24 people to the defendant who was known to him as Chuck and that  
25 they purchased narcotics.

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Evidence that the defendant committed acts of a like nature may not be considered by you in determining whether the accused committed the crime actually charged in the indictment nor may this evidence be considered as showing bad character of the accused.

Then you may ask how should you consider that evidence. You may consider that evidence for the specific limited purpose of determining the crucial question of the defendant's identity, of demonstrating a pattern of conduct on his part and of showing his intent at the time of the transaction charged in the indictment.

This evidence of alleged prior similar acts may be considered only for these purposes and for no others.

In a case such as this, testimony that is offered to prove the identity must be carefully scrutinized. The burden of proof is on the government with reference to every element of the crime charged. I have already mentioned three elements. In addition, the government has the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime charged.

In appraising the identification testimony of a particular witness, you should take into account the following factors, and in addition to the factors which I give you, again you will use your plain everyday common sense:



2 One. Was the identification made by the witness  
3 after the offense the product of his own recollection. If  
4 the identification by the witness may have been influenced  
5 by circumstances under which the defendant was presented to  
6 him for identification, you should consider that identification  
7 with great care.

8 Two. You may take into consideration the number  
9 of times the informant allegedly met with the defendant, the  
10 length of time that elapsed between the occurrence of the crime  
11 and the next time the witnesses saw the defendant, and all the  
12 circumstances, including place and duration of the September  
13 11, 1975 meeting, which was alleged to have occurred at the  
14 Joy Social Club, as well as the interest in the outcome  
15 of the case of persons making the identification.

16 Three. The credibility of each identification  
17 witness should be considered in the same light as the other  
18 witnesses, whether he is truthful, whether he had the capacity  
19 to make a reliable observation on the matter covered by his  
20 testimony.

21 On another subject; the defendant has chosen not  
22 to take the witness stand and testify in his own behalf.  
23 There are many reasons why a defendant may decide not to testify.  
24 You should not speculate as to why the defendant didn't testi-  
25 fy. You may not draw any inference whatsoever from anyone's

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2 not taking the stand and testifying.

3 The law does not impose upon a defendant a duty  
4 to call as witnesses any persons who are shown to have been  
5 present at any of the events involved in the evidence or who  
6 may appear to have some knowledge of the matters in question.  
7 As I charged you previously, the burden of proof was on the  
8 government at the outset and remains upon the government  
9 during the entire trial.

10 From time to time you have heard me refer to direct  
11 evidence. In addition, there is another kind of evidence,  
12 circumstantial evidence. Both forms of evidence should be  
13 considered by you in your consideration of this case. In  
14 order for this to be done intelligently, I will now try to  
15 explain the difference between these two types of evidence.

16 Direct evidence is where a witness testifies to  
17 what he saw, heard or observed, what he knows of his own know-  
18 ledge, something which comes to him by virtue of his own  
19 senses.

20 Circumstantial evidence is evidence of facts and  
21 circumstances from which one may infer connected facts which  
22 reasonably follow in the common experience of mankind.

23 Stated somewhat differently, circumstantial  
24 evidence is that evidence which tends to prove a disputed  
25 fact by proof of other facts which have a logical tendency to  
lead the mind to a conclusion that those facts exist which



2 are sought to be established.

3 Circumstantial evidence, if believed, is of no less  
4 value than direct evidence for in either case you must be con-  
5 vinced beyond a reasonable doubt of the guilt of a defendant.

6 Let us take one simple example which is often used  
7 here in this courthouse to illustrate what is meant by cir-  
8 cumstantial evidence.

9 Assume when you entered the courthouse this morn-  
10 ing, it was a dry day. There was no rain. The sky was clear.  
11 Assume that in this courtroom the blinds in front of you are  
12 drawn and that drapes are placed over them so that you can't  
13 look outside. Assume you are sitting in your jury box, and  
14 despite all these facts someone walks through the courtroom  
15 door with an umbrella, dripping wet, followed in a short time  
16 by a person with a raincoat and the person's raincoat was  
17 also wet.

18 Taking our assumptions, you can't look out the cour-  
19 room windows to see directly whether it is raining and if you  
20 are asked, "Is it raining?" you can't say you know it directly  
21 of your own observation but certainly upon the combination of  
22 the facts as I have given them, even though when you entered  
23 the building it was not raining outside, it would be reasona-  
24 ble and logical for you to conclude that it is raining now.

25 That is about all there is to circumstantial

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2 evidence. You infer on the basis of reason and experience  
3 from an established fact the existence of some further facts.

4 There are times when different inferences may be  
5 drawn from facts, whether they are proved by direct or circum-  
6 stantial evidence. The government asks you to draw one set of  
7 inferences while the defendant asks you to draw another. It  
8 is for you to decide, you alone, what inferences you will draw.

9 I will conclude with these few final remarks:

10 Under your oath as jurors you may not allow the  
11 consideration of punishment which might be inflicted upon a  
12 convicted defendant to influence your verdict in any way or in  
13 any sense enter into your deliberations, your functions. Your  
14 function is solely to determine the guilt or innocence of the  
15 defendant on the basis of the evidence.

16 If you believe that the government has proven beyond  
17 a reasonable doubt that the defendant was the individual who  
18 sold two ounces of cocaine to Agent Baker and Johnny Burton on  
19 September 11, 1975, and has proved all three of the elements  
20 of the charge in the indictment which I mentioned earlier be-  
21 yond a reasonable doubt, you will find the defendant guilty.

22 If you believe that the government has not proved  
23 the identity of the seller and all three elements of the  
24 charge beyond a reasonable doubt, you should find the defendant  
25 not guilty.



2 But, on the other hand, if you find that the law  
3 has been violated and that the government has proved its case  
4 beyond a reasonable doubt, you should not refuse because of  
5 sympathy or for any other reason to render a verdict of guilty.

6 There are twelve people who will be going into this  
7 jury room to deliberate. Any verdict must be the unanimous  
8 verdict of all of you. I will point out, however, that no one  
9 should enter upon the deliberations in the juryroom with  
10 such pride of opinion that he or she would refuse to change it  
11 if convinced by intelligent argument on the part of another  
12 juror or jurors that they are right.

13 Nevertheless, you are not to do violence to your  
14 own well founded opinion and common sense. As I said a few  
15 moments ago, you will be taking your good common sense into  
16 the juryroom and I expect that when you come out of the  
17 juryroom your good common sense will accompany you.

18 You are entitled, each of you, to your opinion.  
19 In other words, each of you must decide the case for himself  
20 or herself after thoroughly exchanging views and reviewing  
21 the evidence with your fellow jurors. After you have exchanged  
22 your views and reviewed the evidence, you should vote. The  
23 tally will be kept by your forelady.

24 Ladies and gentlemen, I have now completed my  
25 charge. Before sending you to deliberate, I will see counsel

2 at the side bar.

3 Before I see counsel, I would inquire if jurors one  
4 through twelve are all physically in good health. In addition,  
5 do all feel up to the very serious burden which lies ahead of  
6 you of deliberating on this case? If any of you jurors one  
7 through twelve do not feel physically and emotionally able to  
8 carry out your duties, I would ask that you raise your hands.

9 Let the record show that I see no hands. Therefore  
10 I will ask our two alternate jurors, if they have anything in  
11 the juryroom to get their belongings and while I am talking to  
12 counsel, go there, get your belongings and return to your  
13 seats since I will be excusing you after I send the jury in to  
14 begin their deliberations.

15 The two alternates, if you have anything in the  
16 juryroom, will you please take the key, go in and take your  
17 belongings and return to your seats. If you have nothing in  
18 the juryroom, that will be unnecessary.

19 (At the side bar.)

20 THE COURT: Are there any exceptions to the charge?  
21 Mr. Handal.

22 MR. HANDAL: Yes, Your Honor.

23 THE COURT: Mr. Joy.

24 MR. JOY: Yes, except as previously noted.

25 THE COURT: You had better note them now because I



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2 attempted to accommodate your requests.

3 MR. JOY: The only exception being the similar  
4 acts.

5 THE COURT: Of course you know I modified the  
6 similar acts request.

7 MR. JOY: I understand.

8 THE COURT: What portion of the similar acts--

9 MR. JOY: I don't think there is anything your  
10 Honor can do at this point. I don't want an additional in-  
11 struction. I just want to note the exception if there is that  
12 appeal.

13 THE COURT: I would try to cure the defect now if  
14 you can point something specific out to me.

15 MR. JOY: Just the point that I mentioned before,  
16 that Johnny Burton made the didentification. I don't think  
17 having an instruction which says that it can be considered  
18 adds anything to that identification. I think it tends to  
19 elevate it but I don't think that that can be changed at this  
20 point.

21 That's the only reason for my exception.

22 THE COURT: Are there any requests for supplemental  
23 instructions?

24 MR. HANDAL: No, your Honor.

25 MR. JOY: No, your Honor.

2 THE COURT: Very well.

3 (In open court.)

4 THE COURT: Miss Kruger, will you swear the marshal.

5 (A marshal was duly sworn.)

6 THE COURT: Ladies and gentlemen, I am placing you  
7 in the charge of the marshal. I instruct you to proceed to  
8 your juryroom. When you have all assembled around the table,  
9 I would urge you to begin your deliberations.

10 I will be remaining here in the courtroom with  
11 counsel. I will be proceeding with another matter, but I  
12 will be available to you and shall try to respond to any  
13 written requests as promptly as possible.

14 Marshal, do you have paper and pencil?

15 THE MARSHAL: Yes, your Honor.

16 THE COURT: Jurors one through twelve are directed  
17 to proceed to their juryroom to begin their deliberations.

18 (Jury left the courtroom to deliberate.)

19 (Two alternate jurors were excused.)

20 THE COURT: The court will be in recess while the  
21 jury is deliberating.

22 I turn to counsel and I would ask any objection  
23 should the jury send out a note asking either for the exhibits  
24 which are in evidence or the indictment, if we may send those  
25 in, in response to the note and then after the fact I would



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2 advised you of that. That would be the only note I would act  
3 upon sui sponte if I have your consent.

4 MR. LOWE: I understand Government's Exhibit 1 will  
5 not be exhibited to the jury, your Honor.

6 THE COURT: That is correct. Actually, it will be  
7 the stipulation which is Government's Exhibit 2, Defendant's  
8 Exhibits A and C in evidence and if they request it, a copy of  
9 the indictment. Is that agreeable?

10 MR. JOY: Yes, sir.

11 MR. HANDAL: Yes, your Honor.

12 (Recess.)

13 THE COURT: Gentlemen, I have just received the  
14 first note from the jury in the Morrison case, which I would  
15 ask be marked Court's Exhibit 1. The note reads as follows:

16 "Please give us all the items submitted in  
17 evidence except Government's Exhibit number 1 - and the indict-  
18 ment."

19 Gentlemen, I propose to send into the jury  
20 Government's Exhibit 2, the stipulation, you have that, sir,  
21 and Defendant's Exhibits A and C in evidence. You have those,  
22 Mr. Joy.

23 MR. JOY: Yes, I have handed those to the Court.

24 THE COURT: Very well, and finally a clean copy of  
25 the indictment. Do you have a clean copy of the indictment,



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2 Mr. Handal?

3 MR. HANDAL: Yes, your Honor, I have given it to  
4 Miss Kruger.

5 THE COURT: Very well.

6 Is there any objection from either side if the  
7 Court sends into the jury Government's Exhibit 2 in evidence,  
8 Defendant's Exhibits A and C in evidence and a clean copy of  
9 the indictment?

10 MR. JOY: I have no objection.

11 THE COURT: Very well.

12 MR. HANDAL: No objection, your Honor.

13 (Court's Exhibit 1 was received in evidence.)  
xxxxx

14 (Resumed 12:15 p.m.)

15 THE COURT: Gentlemen, we have received a note from  
16 the jury which I have marked Court's Exhibit 2. The note reads  
17 as follows:

18 "We would like to hear again the testimony regard-  
19 ing, one, red Cadillac by Johnny Burton, Agent King and any  
20 other mention of car. Two, all of Agent Baker's testimony."

21 What I propose to do is this: to have the reporter  
22 locate the testimony and I would ask him at this time how long  
23 he believes it will take to locate all of the testimony and  
24 then to read it back.

25 THE REPORTER: Approximately one hour, Judge.



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2 THE COURT: It is now 12:20 p.m. I propose to  
3 bring the jury in, and indicate we have received their note and  
4 we have been working on it, and I believe that the best thing  
5 to do is would be to send them to lunch at this time and hope-  
6 fully upon their return from lunch we will have the material  
7 ready for them. Is that agreeable?

8 MR. JOY: Yes, it is.

9 (Jury present.)

10 THE COURT: Ladies and gentlemen, since we received  
11 your most recent note, we have been going through the testimony  
12 in an effort to comply with your request. I find that the  
13 material which you have requested is scattered and therefore  
14 it has been taking us some time. We have not yet finished that  
15 particular phase of our work and I note that the second part of  
16 your inquiry called for "all of Agent Burton's testimony."

17 I have inquired of the court reporter and he has  
18 indicated that the reading of the testimony which you have  
19 requested, first we must find all of it, and secondly, read it,  
20 will take in excess of an hour.

21 Therefore I have conferred with counsel and I propos  
22 to send the jury to lunch at this time. Hopefully, when you  
23 return from lunch, we will be in a position to read the testi-  
24 mony which you have requested, either immediately upon your  
25 return or shortly thereafter, since I must consider that there



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2 are other people beside you who will want some lunch and they  
3 may be working during the time you are at lunch.

4 So, I am going to excuse the jury now for lunch.  
5 Marshal, when do you expect you will return?

6 THE MARSHAL: Within an hour.

7 THE COURT: I would suggest I can estimate it about  
8 an hour and a quarter. We'll set watches so that we're hope-  
9 fully ready to go at a quarter of two.

10 The jury is excused, placed in charge of the  
11 marshal. When you return from lunch, Marshal, will you advise  
12 me that the jury is back?

13 THE MARSHAL: Yes, your Honor.

14 (Jury left the courtroom.)

15 THE COURT: With counsels' notice, court is  
16 adjourned until 1:45 p.m. Counsel and Mr. Morrison are directed  
17 to return at that time.

18 (Luncheon recess.)  
19  
20  
21  
22  
23  
24  
25



## 2 A F T E R N O O N S E S S I O N

3 2:00 p.m.

4 (In open court, jury present.)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 While you were at lunch, we completed our review of the testi-  
7 mony. Now we will hear portions which will be taken from the  
8 testimony which we believe respond to your note which was  
9 Court's Exhibit 2, which reads as follows:

10 "We would like to hear again the testimony regard-  
11 ing, one, the red Cadillac given by Johnny Burton, Agent King  
12 and any other mention of car. Two, all of Agent Baker's  
13 testimony."

14 Our review of the testimony discloses that there  
15 was no testimony regarding the red Cadillac given by Johnny  
16 Burton so that we will proceed with the testimony of Agent  
17 King with regard to this subject.

18 The court reporter will read several portions of  
19 Agent'King's examination which we believe cover all mention of  
20 the red Cadillac.

21 After that, the reporter will read all of Agent  
22 Baker's testimony.

23 Mr. Reporter.

24 (Testimony read by the court reporter.)

25 THE COURT: Ladies and gentlemen, we have finished

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2 reading the testimony which you requested. I will direct  
3 the jury to return to resume their deliberations. We will  
4 remain available to you in the event you should require any-  
5 thing further.

6 The jury is placed in charge of the marshal and  
7 will resume deliberations.

8 (The jury left the courtroom.)

9 THE COURT: I will recess court and ask you to be  
10 available. I will be in the robing room. If you need anything,  
11 let me know.

12 MR. JOY: Your Honor, I would like to go across  
13 the street. I will be here in two minutes. May I leave the  
14 number?

15 THE COURT: If you warrant you will be here in  
16 two minutes, I will let you go.

17 MR. JOY: I will leave my number.

18 THE COURT: Yes, I want you to.

19 (Recess.)

20 (Resumed at 5:25 p.m.)

21 THE COURT: Good afternoon, ladies and gentlemen.  
22 I have received a note which indicates that the jury has  
23 reached a verdict. At this time I will ask Miss Kruger to  
24 proceed to take the verdict.

25 (Roll call was taken, all jurors present.)



2 THE CLERK: Madam Forelady, has the jury reached  
3 a verdict?

4 THE FORELADY: Yes.

5 THE CLERK: What is your verdict? What do you find  
6 the defendant?

7 THE FORELADY: Guilty.

8 THE CLERK: Ladies and gentlemen of the jury,  
9 listen to your verdict as it now stands recorded. You say you  
10 find defendant guilty as charged and so say you all.

11 THE COURT: Mr. Joy, do you wish to have the jury  
12 polled?

13 MR. JOY: please, your Honor.

14 THE COURT: Ladies and gentlemen, your forelady  
15 has indicated the verdict of the jury. Miss Kruger will now  
16 inquire of each of you whether the verdict as it has been re-  
17 ported, which is guilty, is your verdict.

18 You may proceed, Miss Kruger.

19 (The jury was polled as to its verdict. All jurors  
20 acknowledged their verdict.)

21 THE COURT: Ladies and gentlemen, as I stated when  
22 the jury was being selected, I never indicate to the jury if  
23 I agree or disagree with a jury's verdict, but I do comment  
24 regarding whether in my view jurors have been faithful to their  
25 duty in performing their duties in a conscientious fashion.

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2 I want to tell each of you as you leave, probably  
3 you will be completing your term of jury service in this case,  
4 that I found each of you to be conscientious and diligent.  
5 The case was short but from the time you assembled two days  
6 ago through a long day yesterday, and through your delibera-  
7 tions today, I have had an opportunity to observe you. First,  
8 as you listened to the testimony; second, as you listened to  
9 the instructions which I gave and, third, as I watched you  
10 today as you were attentive in listening to the testimony that  
11 was read back.

12 It is obvious to me that you took your oath seri-  
13 ously and that each of you performed your duties as jurors in  
14 a conscientious fashion. On behalf of the court I wish to  
15 thank each of you for your jury service. I hope to see you  
16 back here the next time you are called. Good luck.

17 The jury is discharged.

18 (Jury discharged.)

19 (Jury left the courtroom.)



CERTIFICATE OF SERVICE

October 11 , 1977

I certify that a copy of this [REDACTED] appendix has been mailed to the United States Attorney for the Southern District of New York.

Stanley G. Sanders